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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,633	02/05/2004	Andreas Fellingner	RO0206US.RCEDIV (#90568)	5650
28672	7590	02/04/2005	EXAMINER	
D. PETER HOCHBERG CO. L.P.A. 1940 EAST 6TH STREET CLEVELAND, OH 44114			NASH, BRIAN D	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/772,633

Applicant(s)

FELLINGER, ANDREAS

Examiner

Brian Nash

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☒ Certified copies of the priority documents have been received in Application No. 09/308,408.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/5/04</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 09/308,408, filed on 06/28/1999.

### ***Drawings***

2. The drawings in this application are objected to because they are informal. The informal drawings filed in this application are acceptable for examination purposes. When the application is allowed, applicant will be required to submit new formal drawings.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1 and 6 respectively, the terminology "conertinaed, concertinaeing" is vague, indefinite, and confusingly worded because it is not clear what applicant is claiming.

In claim 1, lines 6-7, it is not clear if the envelope can merely be rolled up or if it is actually rolled up, i.e. the step of rolling up the layers is not positively claimed.

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In claim 2, similar to lines 6-7 of claim 1, it is not clear if the chambers receive depressions as part of a method step, i.e. the step of forming a depression in the flexible base layer is not positively claimed.

In claim 5, the step of breaking the chamber with finger pressure is not positively claimed and it is not clear if the chambers can merely be broken or actually broken open.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by US 3,107,782 to Jaroff et al. Jaroff et al shows the same invention including a method of storing swabs (30) in a rolled up condition wherein the number of swabs is predetermined and adjacent chambers (33) containing the swabs are formed by a base (35) and cover (34) layer that are integrally bonded in between each chamber (see Figs. 4,7).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 3128547 A to Breitzkreuz. Breitzkreuz discloses the invention substantially as claimed including a method of storing sterilized articles in chambers formed between a flexible base layer and a flexible cover layer that are integrally bonded in areas between the chambers, the chambers being sufficiently flexible to be kept in stock rolled up and able to be broken in response to finger pressure. Breitzkreuz discloses articles such as sterilized culture discs, gloves, head covers, shoe covers, etc..., but does not mention storing swabs. However, it would have been obvious to one skilled in the art to configure/modify the system Breitzkreuz in order to include swabs, since such a modification is within the engineering purview of the skilled artisan concerned with packaging and storing medical swabs in a flexible manner and for use at a later time.

9. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 3128547 A to Breitzkreuz in view of Pilchik (Pharmaceutical Blister Packaging, Part II). As discussed above in this office action, Breitzkreuz discloses the invention substantially as claimed, but does not show the step of forming depressions in the base layer. However, Pilchik teaches forming a depression in a base layer during the process of bonding a cover layer to the base layer in order to form blister packs. It would have been obvious to one having ordinary skill in the art at the time of the invention to have combined the teaching of Pilchik with the method of Breitzkreuz in order to pre-form depressions in the base layer prior to sealing the two layers together in order to form cavities for holding articles therein.

10. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE 3128547 A to Breitzkreuz in view of US 5,187,921 to Wilson et al. As discussed above in this office action, Breitzkreuz discloses the invention substantially as claimed, but does not disclose a base layer

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selected from a group consisting of polyamide and polyethylene and a cover layer consisting of sterilization paper. However, Wilson et al teach the method of forming and filling cavities between two layers wherein the base sheet is selected from a group containing polyamide (nylon) and a cover sheet from a group containing Kraft sterilization paper (see Fig. 4). It would have been obvious to one having ordinary skill in the art at the time of the invention to have combined the teaching of Wilson et al with the method of Breitzkreuz in order to form chambers using sterilization paper in order to maintain sterilized conditions for packaged articles.

11. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 3,107,782 to Jaroff et al in view of Pilchik (Pharmaceutical Blister Packaging, Part II). As discussed above in this office action, Jaroff et al disclose the invention substantially as claimed, but do not show the step of forming depressions in the base layer. However, Pilchik teaches forming a depression in a base layer during the process of bonding a cover layer to the base layer in order to form blister packs. It would have been obvious to one having ordinary skill in the art at the time of the invention to have combined the teaching of Pilchik with the method of Jaroff et al in order to pre-form depressions in the base layer prior to sealing the two layers together in order to form cavities for holding articles therein.

12. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 3,107,782 to Jaroff et al in view of US 5,187,921 to Wilson et al. As discussed above in this office action, Jaroff et al disclose the invention substantially as claimed, but do not disclose a base layer selected from a group consisting of polyamide and polyethylene and a cover layer consisting of sterilization paper. However, Wilson et al teach the method of forming and filling cavities between two layers wherein the base sheet is selected from a group containing polyamide (nylon)

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and a cover sheet from a group containing Kraft sterilization paper (see Fig. 4). It would have been obvious to one having ordinary skill in the art at the time of the invention to have combined the teaching of Wilson et al with the method of Jaroff et al in order to form chambers using sterilization paper for the purpose of maintaining sterilized conditions for packaged articles.

13. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 3,107,782 to Jaroff et al in view of US 5,695,063 to Roulin et al. As discussed above in this office action, Jaroff et al disclose the invention substantially as claimed, but do not disclose the step of breaking the chamber in response to finger pressure on the cover layer. However, Roulin et al show two bonded flexible layers wherein the cover layer is torn by finger pressure. In view of Roulin et al, it would have been obvious to one having ordinary skill in the art to break the chamber via finger pressure for the purpose of dispensing the chamber contents.

### *Conclusion*


14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Jaroff et al, Peters, Wilson et al, Turngren, Saldana et al, Dunshee, and Oltmann are cited to show related references.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Nash whose telephone number is 571-272-4465. The examiner can normally be reached on Monday – Thursday from 8 a.m. to 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached at 571-272-4467.

The official fax number for this Group is: 703-872-9306

Brian Nash  
27 December 2004

  
**SCOTT A. SMITH**  
**PRIMARY EXAMINER**